

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 238 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

HAMENDRA FAMILY TRUST

Appearance:

MR BB NAIK for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 06/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

The following substantial question of law for the assessment year 1978-79 has been referred to us for answer at the instance of the revenue :-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the assessment in the case of the assess trust was required to be made on a substantive basis and not on a protective basis as held by the Income-tax Officer ?"

2. The learned counsel appearing for the revenue as also the learned counsel appearing for the assessee state that the question referred to in this reference is squarely covered by the decision of Division Bench of this Court in K.T. Doctor vs. CIT, reported in (1980) 124 ITR 501 which was followed by another Division Bench of this Court in the case of CIT vs. Mangaldas Becharadas Family Trust, (1999) 236 ITR 574. It has also been informed that the appeal of the department against the decision in the K.T. Doctor (Supra) has been dismissed by the Supreme Court reported in (1998) 230 ITR 744.

3. In the case of the same assessee, similar question of law raised for the earlier assessment years was answered in favour of the assessee relying on the decision in the case of K.T. Doctor vs. CIT reported in (1980) 124 ITR 501. A copy of the order of this Court passed on 13.11.1987 in the case of CIT vs. Hemendra Family Trust (the assessee herein) in Income Tax Reference No. 4 of 1984 has been placed before us for perusal. In the case of K.T. Doctor and Mangaldas Becharadas Family Trust (Supra), the Division Bench of this Court had an occasion to consider similar question and it has been held that a trust can be a partner in a partnership firm and the income derived by that trust has to be substantively assessed in the hands of the trust. There cannot be any assessment on protective basis against the individual partner of the trust. As the question posed before us has been squarely answered by this Court in two cases mentioned above, the question has to be answered in favour of the assessee and against the revenue.

The reference is accordingly disposed of with no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-